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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,840

05/31/2005

Bernardus Hendrikus Hendriks

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

AGUSTIN, PETER VINCENT

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

11/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/536,840	<b>Applicant(s)</b> HENDRIKS ET AL.	
	<b>Examiner</b> Peter Vincent Agustin	<b>Art Unit</b> 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 and 6 is/are allowed.
- 6) ☒ Claim(s) 5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This application is a national stage entry (371) of PCT/IB03/05376, filed November 24, 2003.
2. Claims 1-3 & 5-9 are currently pending.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Kawabata et al. (US 2002/0063972).

In regard to claim 5, Kawabata et al. disclose an objective lens (Figure 1) comprising at least an annular part (14) having a first numerical aperture (paragraph 0057: “numerical aperture becomes about 0.45”) and a central part (as shown) having a second numerical aperture (paragraph 0057: “original numerical aperture (0.6)”), wherein the second numerical aperture is higher than the first numerical aperture.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawabata et al.

For a description of Kawabata et al., see the rejection above. However, Kawabata et al. do not disclose: in regard to claim 7, that the second numerical aperture is higher than 0.7 and the first numerical aperture is more than ten per cent lower than the first numerical aperture; in regard to claim 8, that the first numerical aperture is between 0.35 and 0.7 and the second numerical aperture is higher than 0.7; and in regard to claim 9, that the first numerical aperture is between 0.35 and 0.7 and the second numerical aperture is higher than 0.8.

*In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” In this case, Kawabata et al. disclose a general condition wherein a second numerical aperture of a central part of a lens is greater than a first numerical aperture of an annular part of the lens. Therefore, the specific values/ranges claimed in claims 7-9 would have been an obvious matter of engineering design choice and optimization which would have been discoverable by routine experimentation by one of ordinary skill in the art at the time of invention. See also *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

***Allowable Subject Matter***

7. Claims 1-3 & 6 are allowed over the prior art of record for the reasons noted in the previous Office action.

***Response to Arguments***

8. Applicant's arguments, see page 11, filed October 27, 2008, with respect to the rejections of claims 5 & 7-9 based on the Yamakawa reference have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kawabata et al., as noted above.

***Contact Information***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Vincent Agustin whose telephone number is (571) 272-7567. The examiner can normally be reached on Monday-Thursday 8:30 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, A. L. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter Vincent Agustin/  
Primary Examiner, Art Unit 2627